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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE :

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION No.8809/1998 C/w. W.P.No.36500/97

W.P.No.8809/1998

Between :

1. Sri.Shankar s/o Mahadevappa,  
Chandakavate, age: major,  
occ: Service, R/o Mudhol,  
Dist: Bagalkot
2. Smt.Sharanabai w/o Mahadevappa,  
Chandakavate, age: Major,  
occ:Household work, r/o Mudhol,  
Dist: Bagalkot.

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.. Petitioner

( By Sri.Ramesh Anneppannavar, Advocate )

And :

1. The Divisional Controller,  
KSRTC, Sirsi Division  
Sirsi.
2. The Presiding Officer,  
Industrial Tribunal,  
at Hubli.

.. Respondents

( By Sri.K.Lakshminarayana Rao, Advocate for  
R-1 and Sri.K.H.Jagadish, HCGA for R-2)

W.P.No.36500/1997

Between :

Karnataka State Road  
Transport Corporation,  
Central Offices, Bangalore  
by its Chief Law Officer.

... Petitioner

( By Sri.K.Lakshminarayana Rao, Advocate )

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And :

Sri.M.C.Chandakawate  
(deceased)  
Ex-Conductor KSRTC,  
by his legal representatives

1. Sri.Shankar,  
S/o Sri. Mahadevappa Chandakawate,  
major, of Belgaum.
2. Smt.Sharana Bai,  
W/o Mahadevappa Chandakawate,  
major, of Belgaum.

C/o Sri.V.G.Kulkarni, Advocate,  
Chandabawadi Road,  
Bijapur.

3. The Presiding Officer, --  
The Industrial Tribunal,  
Hubli.

.. Respondents

( By Sri.Ramesh Anneppannavar, Advocate  
for R-1 & 2 and Sri.K.H.Jagadish, HCGA  
for R-3 )

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These writ petitions are filed under Articles 226 & 227 of the Constitution of India praying to quash vide Ann.A dated 25.2.97 passed by R2 in so far as the denial of backwages from the date of dismissal that is 9.,8.82 til the date of death 1.1.89 be pleased to award full backwages for that period and etc., in W.P.No.8809/98 and to quash vide Ann.A dated 25.2.97 by R2 in W.P.No.36500/97.

These writ petitions are coming on for order this day, the Court made the following :

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### ORDER

On proof of misconduct in a domestic enquiry, the workman-Conductor in the KSRTC was dismissed from service. He raised an industrial dispute in that regard. The domestic enquiry was held invalid. Evidence was then led in. The Labour Court held the charge as proved. In the meantime, the workman had died. Therefore, from the date the domestic enquiry was held invalid up to the date of the death of the workman, back wages were ordered to be paid. This is the only relief given in the award. The employer, as also the legal representatives of the workman, being aggrieved by this award, have filed these two separate writ petitions.

2. The charge having been held established, the only question was, whether the punishment of dismissal from service was commensurate with the said charge. The charge was a serious one, inasmuch as, it related to pilferage and reissuing of tickets. Nevertheless, having regard to the facts and circumstances of the case, I am of the opinion that, punishment of dismissal from service was

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disproportionate to the said charge. In the circumstances, a lesser punishment needs to be substituted by way of denial of 75% of back wages from the date of dismissal till the date of reinstatement. Since, in the meantime, the workman has died, the relief has to be restricted only till the date of death of the workman.

3. Sri.K.Lakshminarayana Rao, learned counsel for the employer-KSRTC, submits that, there is inordinate delay on the part of the workman in raising the dispute. Sri.Ramesh Annepannavar, learned counsel for the LRs of the workman submits that, having regard to the fact that workman is no more, even the punishment as now proposed as lesser punishment would be harsh. I have taken both these aspects in to consideration in deciding as to what should be the lesser punishment to be substituted on the facts and in the circumstances of the case.

4. Impugned award is modified. Charge is held proved. Punishment of dismissal from service is held disproportionate to the said charge. A lesser punishment by way of denial of 75% of back wages from the date of dismissal till the date of

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reinstatement is substituted. With this lesser punishment, the workman is required to be reinstated in service with the benefit of continuity of service and consequential benefits without reference to the order of dismissal. Since reinstatement cannot be ordered because the workman has died in the meantime, the workman is deemed to have continued in service without any reference to the order of dismissal till the date of his death, with the benefit of continuity of service and consequential benefits, subject, however, to the condition that, from the date of order of dismissal till the date of his death, he would be entitled to only 25% of back wages and not full back wages. What the LRs of the workman, therefore, are required to be paid is 25% of back wages during the period from the date of order of dismissal till the date of death, in addition to terminal benefits on the basis that workman continued to be in service uninterruptedly till the date of his death. In computing the monetary benefits so payable to the LRs, payment made to the LRs in pursuance of the interim order of this Court dated 20.1.1998 shall be given due deduction. Sri.Lakshminarayana Rao submits that, in this regard, a sum of Rs.30,443/- is deposited with

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the Industrial Tribunal, Hubli, in I.D.No.164/91. It is, therefore, directed that, in computing the amount to be paid to the LRs of the workman in terms of this modified award, the said sum of Rs.30,443/shall be given due deduction. LRs of the workman are at liberty to withdraw the <sup>said</sup> sum of Rs.30,443/-.

5. Both the writ petitions are disposed of accordingly.

Sd/-  
JUDGE

